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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1958.

No. 640

MISSOURI PACIFIC RAILROAD COMPANY, a Corporation,
Petitioner,

vs.

JOHN DOE et al. (Whose Names are Otherwise Unknown to Plaintiff); NICHOLAS M. BLASSIE, AUGUST GIESEKE, Individually and as Representatives of LOCAL UNION NO. 88, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO,
Respondents.

On Petition for a Writ of Certiorari to the St. Louis Court of Appeals, State of Missouri.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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BRIEF FOR RESPONDENTS IN OPPOSITION.

CITATIONS TO OPINIONS BELOW.

The Citations to the Opinions Below are adequately set forth in the Petition for a Writ of Certiorari.

JURISDICTION.

The jurisdictional requirements are adequately set forth in the Petition for Writ of Certiorari.

QUESTIONS PRESENTED.

1. Where a labor union, in picketing an employer whose business affects commerce within the meaning of the National Labor Relations Act as amended, in connection with a campaign to organize that employer's salesmen, pickets, among other places, at a railroad spur track which enters that employer's plant and is used exclusively by that plant, and where the employees of the railroad refuse to cross that picket line, may a State court, at the instance of the railroad, enjoin such picketing at such spur track where the railroad alleges:

(a) That the sole purpose of the picketing is to force the picketed employer to force its salesmen to join the Union and to directly force those salesmen to join, and that such purposes are in violation of both the National Labor Relations Act and State law, and

(b) That the Union established such picket line, knowing full well that the railroad employees would refuse to cross it,

where the railroad files no unfair labor practice charges with the NLRB.

2. Whether railroad employees are employees of "any employer" within the meaning of Section 8 (b) (4) (A) of the Federal Act, and if they are not, whether the State may then enjoin such picketing?

STATUTES INVOLVED.

The statutory provisions involved have been adequately set forth in the Petition for Writ of Certiorari.

STATEMENT OF THE CASE.

Respondents are officers and representatives of Local Union No. 88, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, hereafter referred to as "Local 88" or as "the Union", said Union being a voluntary, unincorporated labor organization (Tr. 249). Swift & Company, hereafter called "Swift", owns and operates a meat packing plant in St. Louis, Missouri, where it slaughters and processes livestock, selling its product in an eleven-state area (Tr. 4; Tr. 96-7).[1] Petitioner is Missouri Pacific Railroad Company, hereafter called "the Railroad", which has a spur track leading into Swift's property and which is used exclusively by Swift (Tr. 26-27). Swift is engaged in interstate commerce and both it and its employees are subject to the provisions of the National Labor Relations Act, as amended, also referred to as the Labor Management Relations Act, and portions of which are known as the "Taft Hartley Act", said statutes being hereafter referred to as "the Federal Act" (Tr. 4, 27, 30).

On September 10, 1953, Local 88 began picketing at Swift's plant in connection with a campaign to organize Swift's salesmen (Tr. 96—31). Picket signs read "St. Louis Independent Packinghouse Salesmen Non-Union" (Tr. 96, 43, 44). In conjunction with said picketing, the Union picketed on public property at the spur track above mentioned, and the normal railroad crew refused to cross this line (Tr. 96—39; 96—75). In conjunction with this picketing, the Union distributed handbills setting out the Union's reasons for picketing (Pltf's Ex. 6; R. 96—424).[2]

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[1] Swift was plaintiff below, and petitioner here was an intervening plaintiff. The Petition herein is a companion proceeding to the Petition for a Writ of Certiorari filed with this Court by Swift & Company against the same respondents, now docketed in this Court as No. 623, October Term, 1958.

[2] Reference "Pltf's Ex. 6" is to exhibit of Swift, plaintiff in the State court suit.

During the short time it took place, the picketing was entirely peaceful (Tr. 253, 257; Pet. App. E, p. 33).[3]

On September 11, 1953, the day after picketing began, Swift filed its suit for an injunction in the State court (Tr. 3), and on the same day the St. Louis Circuit Court issued an ex parte restraining order against such picketing, which necessarily included the picketing at the spur track (Tr. 15, 16). On October 22, 1953, the railroad was permitted to file a petition as intervening plaintiff seeking permanent injunctive relief (Tr. 23). In that petition, the Railroad alleged, in identical language to that which Swift had used in its petition (Tr. 8, 9), that the sole purpose of the Union's picketing was to force Swift's salesmen to join Local 88, and to force Swift to coerce its salesmen to join that Union, all alleged to be in violation of the Federal Act and of Article I, Section 29 of the Missouri Constitution (Tr. 29, 30). It also alleged that the Union established said picket line knowing full well that the Railroad's employees would refuse to cross it (Tr. 27). In its answer to said intervening petition, Local 88 not only denied these allegations, but pleaded that the purpose of the picketing was to publicize the salesmen's non-union status, intending thereby to persuade the salesmen to the desirability of unionism through the influence of public opinion (Tr. 50, 51); that the right to picket was guaranteed by the First and Fourteenth Amendments to the United States Constitution; and that the cause presented issues which were under the exclusive jurisdiction of the National Labor Relations Board, and that the courts of Missouri were without jurisdiction over the subject matter of the action (Tr. 49, 50).

Unlike Swift, which filed unfair labor practice charges before the Board asking restraint of this picketing (as

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[3] Reference is to Appendix "E" as it is printed in the Railroad's Petition for Writ of Certiorari filed herein

more fully appears in the Petition for Writ of Certiorari filed in companion Case No. 623 by Swift, and in these Respondents' Brief in Opposition thereto), the Railroad has never filed any unfair labor practice charges against this Union with the Board.

The cause was finally heard on the merits in October, 1956, at which time the trial court issued a permanent injunction against said picketing, both in favor of Swift on its petition and in favor of the Railroad on its intervening petition (Tr. 259 to 263), though finding such picketing peaceful (Tr. 253, 254, 257), and for organizational purposes (Tr. 251, 257). Local 88 appealed to the Missouri Supreme Court, which transferred the case to the St. Louis Court of Appeals on the ground the latter court had original appellate jurisdiction (R. 56-57).

The St. Louis Court of Appeals reversed the Trial Court, holding that it lacked jurisdiction to issue the injunction, because Swift's State court petition specifically alleged that the Union's picketing violated the Federal Act, and charged unfair labor practices reasonably bringing the controversy within the provisions of the Federal Act, that the Union's answer denied those charges; that an issue within the scope of the Federal Act was thus presented, and the State court was obliged to decline jurisdiction in deference to the Board, though picketing for the purpose alleged might be unlawful under state policy (Pet. App. A, p. 13). Among cases cited by the St. Louis Court of Appeals in support of its opinion were **Garner v. Teamsters, Chauffeurs & Helpers Local Union No. 776, AFL**, 346 U. S. 485, 74 S. Ct. 161, 98 L. Ed. 228; and **Weber v. Anheuser-Busch, Inc.**, 348 U. S. 468, 75 S. Ct. 480 (Pet. App. A, pp. 12, 13).

The St. Louis Court of Appeals further found that the State court had no jurisdiction to enjoin the picketing at

the instance of the Railroad; that in its petition filed prior to **Garner**, the Railroad had taken the firm position that the picketing was violative of the Federal Act, and had forcefully argued a violation of Section 8 (b) (4) in its trial brief (Tr. 246); that the Railroad was an employer within the meaning of Section 8 (b) (4) (A) of the Act, and that for these reasons and under the same authorities it cited in connection with its review of the trial court's action on Swift's petition, the State court had no jurisdiction to entertain the Railroad's intervening petition (Pet. App. A, pp. 16 to 18).

ARGUMENT.

The opinion of the St. Louis Court of Appeals, holding that Missouri courts had no jurisdiction to enjoin the peaceful picketing here present is clearly correct. In its intervening petition, the Railroad alleged that the **sole** purpose of the Union's picketing was to force Swift's salesmen to join the Union and to force Swift to in turn force those salesmen to join, and specifically alleged that such purpose was violative of the Labor-Management Relations Act (correctly termed the "National Labor Relations Act" as amended, and hereafter referred to as "the Federal Act") (Tr. 29-30). That allegation was never stricken or amended.[4] As the St. Louis Court of Appeals correctly ruled (Pet. App. A, p. 16), the Railroad, having alleged unfair labor practices under the Federal Act, is confronted with the language of this Court in **Weber v. Anheuser-Busch**, 348 U. S. 468, 481:

> "* * * where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the Federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance."

The St. Louis Court of Appeals called attention to the fact that in addition to charging the unlawful purpose of

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[4] The St. Louis Court of Appeals in its opinion (Pet. App. E, p. 16), and the petitioner under footnote 1, page 6 of its Petition for Writ of Certiorari, erroneously state that these references to the Federal Act were stricken. These allegations appear in paragraph 8 of the Railroad's intervening petition (Tr. 29, 30), which is shown in the transcript, as such petition appeared after interlineation amendments (Tr. 24). The granted interlineation amendments dealt with paragraph 9, which concerned allegations of interference, by reason of the picketing, with the Railroad's duty to serve Swift (Tr. 71, 30).

the picketing as above set out, the Railroad also charged that said picket line was established by the Union, knowing full well that the Railroad's employees would not cross it, and that the Railroad had forcefully argued in its Trial Brief that the picketing violated Section 8 (b) (4) of the Act (Tr. 246). Facts were thus alleged which reasonably brought the controversy within the provisions of Section 8 (b) (4) (A) of the Federal Act, the Missouri Appellate Court held (Pet. App. A, pp. 16, 17). That court rejected the Railroad's contention that a railroad is not an employer within the meaning of the term "any employer" as used in Section 8 (b) (4) (A), and concluded that the National Labor Relations Board was the exclusive primary tribunal to determine whether the picketing involved constituted an unfair labor practice as to the Railroad, and that the State court had no jurisdiction to entertain Missouri Pacific's intervening petition (Pet. App. A, pp. 17, 18).

Leaving aside for the moment reference to Section 8 (b) (4) (A) of the Act, attention is directed to the Railroad's charge that the **sole** purpose of the picketing was to force Swift's salesmen to join the Union and to force Swift to force its salesmen to join. This was precisely the same purpose pleaded by the employer and found by the Pennsylvania courts in **Garner v. Teamsters Union**, 346 U. S. 485, 487. It is the same purpose as that found by the Florida Supreme Court (and held by that Court to be unlawful under Florida law) in the following cases, all reversed by this Court in **Hotel Employees Union v. Sax Enterprises, Inc., et al.**, ... U. S. ..., Jan. 12, 1959, Nos. 5 and 6, Oct. Term, 1958:

Sax Enterprises, Inc. v. Hotel Employees Union, 80 So. 2d 602, 605;

Boca Raton Club, Inc. v. Hotel Employees Union, 83 So. 2d 11, 16;

Fontainebleau Hotel Corp. v. Hotel Employees Union, 92 So. 2d 415, 419.

In both **Garner** and **Sax**, this Court held that the State courts had had no jurisdiction to enjoin the picketing there involved (termed "organizational picketing" by this Court in **Sax**), though in none of those cases had the picketed employer contended, as the Railroad has here, that the picketing was violative of the Federal Act.

The Railroad's sole argument in support of its claim that the St. Louis Court of Appeals opinion was erroneous, was that that Appellate Court found that a railroad is an "employer" as that term is used in Section 8 (b) (4) (A) of the Federal Act. In reaching that conclusion, the St. Louis Court of Appeals relied on two opinions of the United States Court of Appeals for the Fifth Circuit:

International Rice Milling Co. v. NLRB, 183 F. 2d 21;
W. T. Smith Lumber Co. v. NLRB, 246 F. 2d 129.

The Railroad's argument is that the St. Louis Court of Appeals should have adopted the contrary view of the NLRB (which refuses to follow the construction placed on the term by the Fifth Circuit except in cases arising in the Fifth Circuit), and reject the view of a United States Court of Appeals, charged by Section 10 (e) and (f) of the Federal Act with reviewing decisions of the Board. Moreover, this Court determined in **Local Union No. 25 v. N. Y. N. H. and H. R. R.**, 350 U. S. 155, that a railroad was a "person" under Section 2 of the Federal Act so as to entitle it to file charges. In the same case, this Court held that although Section 2 of the Federal Act excludes anyone subject to the Railway Labor Act from its definition of an "Employer", this merely means that neither railroads nor their employees may carry their grievances with one another to the NLRB for resolution, "but it does not follow from this that a railroad is precluded from seeking the aid of the Board in circumstances unrelated to its employer-employee relations" (350 U. S. at 159). Thus, the St. Louis Court of Appeals' construction of the term "any employer" is clearly correct.

However, regardless of the construction of the term "any employer", the fact remains that the Railroad has never filed unfair labor practice charges. It is clear that in the Fifth Circuit at least, it would be entitled to relief if a violation of 8 (b) (4) (A) were proven.[5] It has no right to assume that any other Court of Appeals would take an opposite view. The prescribed processes of the Federal Act must be followed, and this it did not choose to do. Its refusal to follow those processes of the Act cannot confer jurisdiction on the State court.

Even if the Railroad is not "any employer" as used in Section 8 (b) (4) (A), and even assuming arguendo that it would be denied injunctive relief by reason of such a construction, that still would not confer jurisdiction on the State court to enjoin this picketing. As held in **Garner** (346 U. S. at 499-500), the policy of the Federal Act is not to condemn all picketing, but only that ascertained by its prescribed processes to fall within its prohibitions; otherwise, this Court said, it is implicit in the Act that the public interest is served by the freedom of labor to use the weapon of picketing. In **Weber v. Anheuser-Busch**, 348 U. S. at 480, this Court expressed the same thought in this way:

> "Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces."

If Congress did not outlaw the picketing of which the Railroad complains, then the Union should be free to con

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[5] The Union has always contended and still contends that none of its picketing was violative of either the Federal Act or Missouri law. The picketing at the spur track was primary picketing, done on Spring Avenue, a public street, restricted to the point where a spur track, after crossing this street, enters and comes into the property of Swift, and which spur track is used exclusively by Swift. (Tr. 26, 27). Reference to the Intervening plaintiff's (the Railroad) Exhibit A, shows that this is the closest point to Swift property that could be picketed on the Spring Avenue side of that property, without trespassing on private property.

tinue as part of the operation of economic forces. This was organizational picketing in which this Union was engaged, its picketing was conducted at the employer's plant, the picketing was primary, and if not outlawed under the prescribed processes of the Federal Act, it is the intent of Congress that public interest is served by the freedom of this Union to continue to picket.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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